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UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 OAKLAND DIVISION

DONALD J. TRUMP, KELLY VICTORY,  
 AUSTEN FLETCHER, AMERICAN  
 CONSERVATIVE UNION, ANDREW  
 BAGGIANI, MARYSE VERONICA JEAN-  
 LOUIS, NAOMI WOLF, and FRANK  
 VALENTINE,

Plaintiffs,

v.

YOUTUBE, LLC and SUNDAR PICHAJ,

Defendants.

CASE NO.: 4:21-cv-08009-JSW

**OPPOSITION TO PLAINTIFFS'  
 ADMINISTRATIVE MOTION FOR  
 LEAVE TO FILE RESPONSE IN  
 OPPOSITION TO THE MOTION  
 AND MEMORANDUM OF LAW BY  
 INTERVENOR UNITED STATES OF  
 AMERICA IN SUPPORT OF THE  
 CONSTITUTIONALITY OF 47 U.S.C.  
 § 230(c)**

Hon. Jeffrey S. White

Defendants YouTube, LLC and Sundar Pichai (“Defendants”) respectfully oppose Plaintiffs’ administrative motion seeking leave to file a response to the intervention brief filed by the United States in support of the constitutionality of 47 U.S.C. § 230. Dkt. 144.

Plaintiffs’ motion for preliminary injunction and Defendants’ motion to dismiss are now fully briefed. Briefing was completed on February 11, 2022, when Defendants filed their reply brief. Hours later, however, Plaintiffs moved for leave to respond to a brief the United States had filed over two months earlier, on December 9, 2021. Plaintiffs do not explain why they waited so long to make this request, or why they ignored multiple opportunities to respond to the government’s submission during the regular briefing process. Plaintiffs also failed to consult Defendants or seek the stipulation required for an administrative motion by this District’s Local Rules. In light of Plaintiffs’ procedural gamesmanship, their motion should be denied. If the Court grants the motion, Defendants respectfully request an opportunity to submit a short response to Plaintiffs’ brief.

### ARGUMENT

Plaintiffs’ administrative motion is improper for at least two reasons. *First*, Plaintiffs neither sought Defendants’ consent to their motion nor accompanied it with the stipulation required by the Local Rules. *See* Civil L.R. 7-11(a) (“A motion for an order concerning a miscellaneous administrative matter ... must be accompanied by ... either a stipulation under Civil L.R. 7-12 or by a declaration that explains why a stipulation could not be obtained.”); Civil L.R. 7-12 (requiring approval of stipulations from “all affected parties or their counsel”). While Plaintiffs contacted the government for its position on their request, they conspicuously failed to do the same with Defendants. Plaintiffs offered no excuse or justification for cutting Defendants out of the process, and their approach is not permitted by this Court’s rules.

*Second*, Plaintiffs should not be rewarded for their self-serving delay in seeking to respond to the United States’ intervention brief. On December 2, 2021, the government filed its notice of intervention (Dkt. 128), and its brief was filed on December 9, 2021 (Dkt. 132). At that time, Plaintiffs did not seek leave to respond to the government. More than a month later, on January 17, 2022, Plaintiffs filed a combined 35-page opposition to Defendants’ motion to dismiss and reply in support of Plaintiffs’ preliminary injunction motion. Dkt. 141. Anything they wanted to say about

1 or in response to the United States' position on Section 230, Plaintiffs could have said then. But  
 2 Plaintiffs again ignored the government's submission. Only now, more than two months after the  
 3 government filed its brief, nearly a full month after Plaintiffs filed their brief, and hours after  
 4 Defendants filed their reply, have Plaintiffs requested leave to respond to the United States.  
 5 Plaintiffs offer no explanation for the timing of their request, much less their failure to consult with  
 6 Defendants before making it. Only one explanation makes sense: by waiting until now, Plaintiffs  
 7 seek to deprive Defendants of an opportunity to address the new arguments advanced in Plaintiffs'  
 8 proposed brief. That is improper: Plaintiffs had ample opportunity to respond to the government,  
 9 and they should not be allowed to flout the Local Rules in an unwarranted effort to have the last  
 10 word.

### 11 CONCLUSION

12 For these reasons, Plaintiffs' administrative motion should be denied. Should the Court grant  
 13 Plaintiffs' motion, Defendants respectfully request an opportunity to submit a short response to  
 14 Plaintiffs' submission, not to exceed five pages.

15  
 16 Dated: February 15, 2022

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